

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ALEXIS ALEX and NICOLETTE)
PRIETO,)
Plaintiffs,)
v.) Civil Action No. 5:13-728-RCL
KHG OF SAN ANTONIO, LLC)
d/b/a TIFFANY'S CABARET)
Defendant.)

ORDER

Upon consideration of (1) defendant's motion [90] for contempt and sanctions, for plaintiffs' failure to comply with the Court's August 6, 2014 order, or, in the alternative, for further modification of the scheduling order; (2) the plaintiffs' response thereto and counter-motion for sanctions [92]; (3) the defendant's reply [93]; (4) the plaintiffs' supplements [94, 95]; (5) the record herein; and (6) the hearing held on February 19, 2015; it is hereby ORDERED that both motions are DENIED.

This Court does not condone the "rolling" production of documents by plaintiffs which occurred here, but no date for final production was set by order of the Court, and it appears that plaintiffs had, before the defendants' motion was filed on January 6, 2015, produced all available responsive records except those from two banks that plaintiffs' counsel concede were overdue, but which were promptly subpoenaed and produced. Plaintiffs will be bound at trial by their representations that they have no other records, and will not be allowed to "unexpectedly" find them.

The careless oversight of counsel for plaintiffs as to the two bank account records is sufficient to preclude him from prevailing on defendant's motion so as to entitle him to fees. Defendant's dogged pursuit of records that plaintiffs stated did not exist does not entitle defendant to attorneys' fees either. Interrogatories under oath or requests for admissions are options defendant might have pursued, with a request to file them out of time, but the rules do not require plaintiffs to do more than state that documents do not exist to satisfy their response to a request for production.

It is **SO ORDERED** this 2nd day of March 2015.



ROYCE C. LAMBERTH
United States District Judge